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JUL 03 2015 IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY OHIO

POSTED

CUYAHOGA COUNTY
STATE OF OHIO, CLERK OF COURTS

By _____ Deputy

Plaintiff,

v.

ARIEL CASTRO,

Defendant.

) CASE NO.: 13-574231-A

) JUDGE MICHAEL J. RUSSO

) MOTION FOR PROTECTIVE ORDER

Now comes the United States of America, by and through undersigned counsel, and, on behalf of its agency the Federal Bureau of Investigation, hereby respectfully moves this Honorable Court to issue the attached proposed Protective Order. The grounds for this Motion are more fully set forth in the Memorandum in Support attached hereto and incorporated herein as if fully rewritten by this reference.

Respectfully submitted,


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United States Attorney

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Attorneys for United States of America

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of July, 2013, a copy of the foregoing Motion for Protective Order and attached Memorandum in Support were sent via hand delivery to all counsel of record at the address listed on the Court's docket.



LYNNE H. BUCK (#0014166)
JAMES R. BENNETT II (#0071663)
Assistant U.S. Attorneys

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY OHIO

STATE OF OHIO,)	CASE NO.: CR-13-574231-A
)	
Plaintiff,)	JUDGE MICHAEL J. RUSSO
)	
v.)	<u>MEMORANDUM IN SUPPORT OF</u>
)	<u>MOTION FOR PROTECTIVE ORDER</u>
ARIEL CASTRO,)	
)	
Defendant.)	
)	

I. INTRODUCTION

The criminal case relating to Ohio v. Ariel Castro, Cuyahoga County Common Pleas Court Case No. CR-13-574231-A is in the discovery stage. The Federal Bureau of Investigation ("FBI") maintains certain information which may be relevant to this case. A demand has been received by the FBI from the Cuyahoga County Prosecutor's Office to make this information available for purposes of discovery consistent with the Ohio R. Crim. P. 16. In particular, the information subject to this discovery request includes all investigative reports, notes, summaries, digests, physical evidence, a diary, other documentary evidence, and recorded interviews of Jane Doe 1, Jane Doe 2, Jane Doe 3, and/or Jane Doe 4, which have been collected and are maintained by the FBI. Due to the nature of these evidentiary items, they are protected from disclosure under the Privacy Act of 1974, as amended 5 U.S.C. § 552a (1977).

II. LAW AND ARGUMENT

The Privacy Act precludes a federal agency from disclosing information "which is contained in a system of records" to third parties without the written consent of the individual to

whom the record pertains. 5 U.S.C. § 552a(b). The statute contains several exceptions, one of which permits disclosure "pursuant to the order of a court of competent jurisdiction." Id. at § 552a(b)(11). On the basis of this exception, the United States requests that this Court issue the proposed Protective Order attached hereto as Government Exhibit 1 allowing the FBI to disclose information subject to the Privacy Act which may be otherwise discoverable in this action.

Furthermore, due to the sensitive nature of the information to be produced in this matter, the United States seeks the proposed Protective Order to ensure that information made available pursuant to the requested order shall be used only for the purposes related to this action and shall be available only to attorneys for the parties and their employees, the parties themselves, and consultants or experts hired or retained by the parties. The proposed Protective Order also requires that any and all individuals who receive information subject to this proposed Order for purposes of litigation be advised of the conditions of the proposed Protective Order. The United States will indicate to the prosecutor and defense counsel which relevant information is subject to the proposed Stipulated Protective Order and, for purposes of discovery, will make that information available for review by the prosecutor and defense counsel. The FBI will thereafter, make available as necessary, the same information for use in court for pre-trial hearings and/or for trial. Within two weeks of the conclusion of this litigation (including appeals) any information so provided should be returned to counsel for the United States, including all investigative reports, notes, summaries, digests, physical evidence, a diary, other documentary evidence, and recorded interviews of Jane Doe 1, Jane Doe 2, Jane Doe 3, and/or Jane Doe 4, which was collected and is maintained by the FBI, except those items admitted into evidence.

The entry of the proposed Protective Order will enable the United States to make available information that would have been withheld, in whole or in part, pursuant to the Privacy

Act. Nothing in this motion, memorandum, or proposed Protective Order shall be construed as a waiver of other objections or privileges claimed by the United States.

III. CONCLUSION

Based on the foregoing, the Court is respectfully requested to issue the proposed Protective Order.

Respectfully submitted,

STEVEN M. DETTLEBACH
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STATE OF OHIO,

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CLERK OF COURTS
CUYAHOGA COUNTY

CASE NO.: CR-13-574231-A

JUDGE MICHAEL J. RUSSO

STIPULATED PROTECTIVE ORDER

This matter is before the Court upon the request of the United States of America for a protective order for the disclosure and protection of official information of the United States Department of Justice ("DOJ").

WHEREAS, the Federal Bureau of Investigation ("FBI") is in possession of information collected in the course of a criminal investigation; and

WHEREAS, such information may be related to the above captioned case; and

WHEREAS, counsel for Defendant Ariel Castro has requested discovery of this information from the State of Ohio; and

WHEREAS, federal law prohibits the disclosure of material absent compliance with applicable federal law; and

WHEREAS, the FBI desires to make available such information only upon the terms and conditions contained in this Protective Order;

NOW, THEREFORE, UPON GOOD CAUSE SHOWN, the Court orders the following:

1. This Protective Order is entered for the purpose of protecting the inappropriate disclosure of official DOJ information pursuant to the objectives of the Privacy Act, 5 U.S.C. § 552a,

relevant Department of Justice regulations (including 28 U.S.C. §§ 16.21 et seq.), and other applicable law.

2. The United States agrees to make available to the State of Ohio and to counsel for Defendant official DOJ information consisting of all investigative reports, notes, summaries, digests, physical evidence, a diary, other documentary evidence and recorded interviews of Jane Doe 1, Jane Doe 2, Jane Doe 3, and/or Jane Doe 4, which has been collected and is maintained by the FBI.


3. The parties agree that information made available pursuant to this Protective Order shall be used only for the purposes of preparing for and prosecuting/defending this litigation. Further, such information shall only be available to attorneys for the parties, their employees, the parties themselves, and consultants or experts hired or retained by the parties. Any person to whom disclosure is made shall be bound by the terms of this Protective Order and counsel for the parties shall be obligated to inform such persons of this Protective Order prior to making any disclosure. Neither the parties, nor their counsel, nor any individual to whom official information has been made available shall make any further disclosure of information or materials covered under this Protective Order except as authorized herein. Nothing in this order prohibits the parties, to the extent permitted by the trial court, from offering into evidence and using as an exhibit at trial any of the information and/or materials covered by this Protective Order.

4. Nothing in this Order constitutes any decision by the Court concerning discovery disputes or the admission into evidence of any specific document. Further, this Order does not constitute a waiver by the State of Ohio or Defendant of any right to object to the discovery or admission into evidence of any information or material subject to this Order.

5. The parties agree that information made available pursuant to this Protective Order shall remain the property of the DOJ. The parties may make arrangements with the FBI to view any such information at the FBI offices. To the extent that any party desires copies of any documents, recordings, or other materials, such disclosure shall be governed by agreement of the parties or further Order of this Court. If copies are provided of any information, then, upon conclusion of this action (including appeals), all copies of official DOJ information which have been released to the parties under this Order, and any copies made by the parties for use for any reason whatsoever in the litigation, excepting exhibits admitted into evidence, shall be returned to the FBI within thirty days of the conclusion of such proceedings.

Upon review of the foregoing Protective Order, the same is hereby approved.

IT IS SO ORDERED.


JUDGE MICHAEL J. RUSSO

7-3-13
DATE

Approved by:

STATE OF OHIO



BLAINE D. THOMAS

DEFENDANT ARIEL CASTRO


JAYE M. SCHLACHET

UNITED STATES OF AMERICA


JAMES R. BENNETT II


CRAIG T. WEINTRAUB